Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DISCOVERY PARK COMMUNITY ALLIANCE, a Washington non-profit corporation; and ELIZABETH A. CAMPBELL, Petitioners, v. CITY OF SEATTLE Respondent.	CASE NO. 2:19-cv-1105-JCC PLAINTIFFS' MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO JOIN SEATTLE PUBLIC SCHOOLS **NOTE ON MOTION CALENDAR: Friday, October 18, 2019**

I. INTRODUCTION

Petitioners Discovery Park Community Park Alliance and Elizabeth Campbell by and through their attorney, Allen T. Miller and the Law Offices of Allen T. Miller, PLLC, respectfully file this memorandum in opposition to Respondent City's Motion to Join Seattle Public Schools as a Respondent in Petitioners' action for review under the Washington Land Use Petition Act, Ch. 36.70C RCW (LUPA.). The Seattle Public Schools is not a proper or necessary party.

Respondent City has also moved to join the U. S. Department of the Army. Petitioners do not object to the joinder of the Department of the Army and stipulate to such joinder.

II. STATEMENT OF FACTS AND ISSUES

Respondent City of Seattle filed a Motion to Join the U.S. Army and Seattle Public Schools in this case which results from the City's removal of Petitioners' state Land Use

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Petition Act action to the U.S. District Court. Respondent City seeks to join the Department of the Army ("US Army") and Seattle Public Schools ("SPS"). The US Army is a proper party under LUPA, the SPS is not. (See RCW 36.70C.050)

This action involves the redevelopment of Fort Lawson, which is owned by the Army and located in the city of Seattle. Petitioners do not object to Respondent City's recitation of the factual history in the City's Motion at page 2, line 4 through page 3, line 7. However, Petitioners do object to joinder of SPS as a party because SPS is not an owner and was not a named party or a participant in the administrative proceedings at the city level. (See RCW 30.70C.050 and RCW 30.70C. 060.)

The court should note that the SPS has not submitted a Declaration or the other pleadings in support of the City's Motion. The City made an erroneous interpretation of the law, engaged in an unlawful procedure and/or failed to follow the proscribed process under the terms of State Environmental Policy Act (SEPA) and of LUPA. The decisions approving Resolutions 31887, CB 119510 and CB 119535 are ultra vires, in violation of state and local law and regulations, and that the decision is contrary to law. A Declaratory Judgment is necessary pursuant to RCW 7.24.020, declaring that the March 28, 2018 FEIS and the decision to approve Resolution 31887, CB 119510 and CB 119535 are null and void and have no effect.

The issues raised in the administrative proceeding and in Petitioners' LUPA action involve the Respondent City's manner of processing and its decision regarding the development of Fort Lawton. The City's procedure and decision did not involve SPS.

III ISSUE PRESENTED

Whether the City Respondent has met its burden to establish the basis of the Court's jurisdiction to bring in the Seattle Public Schools as a respondent under LUPA or Federal Rule of Civil Procedure 19.

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IV EVIDENCE

Respondents rely on the documents and records that have been removed to this court from the state court action and the accompanying Declaration of Allen T. Miller. The documents show that SPS is not a proper or necessary party to this action.

V ARGUMENT

The party seeking to invoke federal jurisdiction to join a party to the litigation has the burden of demonstrating that the requirements for joinder have been met. Jurisdiction over a party in a LUPA action is established by Washington law under RCW 36.70C.050 and Federal Rule of Civil Procedure 19.

Respondent City's Declaration and Exhibits presented in support of the Motion to Join SPS do not provide sufficient evidence to justify the joinder of SPS. SPS was not involved in the proceedings before the city during the administrative phase of this matter. SPS is not a proper or necessary party now.

SPS was not brought into the administrative proceedings by Petitioners or the City. Under LUPA a party should be joined if the party is "needed for just adjudication of the petition." RCW 36.70C.050. The SPS is not a proper party under RCW 36.70C.040(2)(b)(i) and (d) and was not an "applicant," "appellant," or "participant" in the proceedings below:

> . . . .
> (a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;
> (b) Each of the following persons if the person is not the petitioner:
> (i) Each person identified by name and address in the local juisdiction's writte decision as an applicant for the permit or approval at issue; and
> (ii) Each person identified by name and address in the local jurisdiction's written decision a an owner of the property at issue;
> . . . .
> RCW 36.70C040(2)

Under the Federal Rules of Civil Procedure 19(a)(1) joinder is necessary in the action if "complete relief" cannot be accorded among those already parties to the action:

> (a) Persons Required To Be Joined if Feasible:
> (1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a

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party if:
(A) in that person's absence, the court cannot accord complete relief among existing parties; … .

Seattle Public Schools was not a party in the underlying land use matter. The City took no action to join Seattle Public Schools in the administrative matter. Respondent City has failed to identify why Seattle Public Schools is necessary for a just adjudication now. The City's stated reasons for joining Seattle Public Schools does not justify joinder as a new Respondent under FRCP 19. The City was aware of the possible interests of Seattle Public Schools in the underlying action and did not join the SPS at that time. SPS has taken no action to enter as a party into this matter. *Hall v. National Service Industries, Inc.,* 172 F.R.D. 157, 159 (E.D. Pa. 1997).

In determining whether an absent party must be joined under FRCP 19(a), the court must determine if the party is "a necessary party who should be joined in the action." *Bank of America National Trust v. Hotel Rittenhouse Associates,* 844 F.2d 1050, 1053 (3rd Cir. 1988). If the court determines that the absent party is necessary, then the court must determine if it is feasible for the party to be joined. The moving party has the burden of proving why the party is required to be joined under FRCP 19(a). *(Id.).*

The court must determine whether "complete relief" can be granted absent the joinder. *James Montgomery Scott, Inc. v. Shepard Niles, Inc.,* 11 F.3d 399, 405 (3rd Cir. 1993). The court must also determine if the absent party would be subjected to "needless multiple litigation" if not joined. *(Id.)* Petitioners' Land Use Appeal does not involve the Respondent City's lease or sale of portions of Fort Lawton in the future.

Entities who "could be affected" do not become necessary parties. *NAACP v. Donovan,* 558 F.Supp. 218 (D.C. 1982). Seattle Public Schools is not an indispensable party in this matter under FRCP 19. *Salt Lake Tribune Publishing Co. v. AT&T Corp.,* 320 F.3d 1081 (10th Cir. 2003). Seattle Public Schools is not a necessary party to this litigation. *Ohio Valley Environmental Coalition v. Bulen,* 429 F.3d 493 (4th Cir. 2005).

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Petitioners' Land Use Appeal challenges the erroneous application of the law and facts in the underlying administrative proceedings. RCW 36.70C.130(1). Petitioners are not challenging any action or involvement by Seattle Public Schools. While Seattle Public Schools may have an interest in the City's activities related to the City's planned redevelopment of Fort Lawson, the current action by Petitioners is not the place or time for Seattle Public Schools to become involved. *See Cathcart –Malthy-Clearview Community Counsel v. Snohomish City,* 96 Wn.2d 201, 201-206, 634 P.2d 853 (1981).

The City made an erroneous interpretation of the law, engaged in an unlawful procedure and/or failed to follow the proscribed process under the terms of State Environmental Policy Act and of LUPA. The decisions approving Resolutions 31887, CB 119510 and CB 119535 are ultra vires, in violation of state and local law and regulations, and that said decision is contrary to law. A Declaratory Judgment is necessary pursuant to RCW 7.24.020, declaring that the March 28, 2018 FEIS and the decision to approve Resolution 31887, CB 119510 and CB 119535 are null and void and have no effect,

An interest in the subject matter does not by itself make one an indispensable party to a land use action. Federal Rule of Procedure 19 defines circumstances in which court can and must override a Petitioner's party structure to ensure that so-called necessary and required parties are before the court, as complete justice requires. There is no need to expand Petitioner's litigation in this matter to the Seattle Public Schools. Petitioners' action does not wish to impact the Seattle Public Schools. Petitioners seek to undo the erroneous decision in the administrative proceedings involving the City's plan to redevelop Fort Lawton. Seattle Public Schools was not an applicant/party in the administrative proceedings .

VI CONCLUSION

Seattle Public Schools is not proper party to this action. Petitioners' concerns are about the manner in which Respondent City processed and approved the acquisition of Fort Lawton for development. The City made an erroneous interpretation of the law, engaged in an unlawful procedure and/or failed to follow the proscribed process under the terms of State Environmental Policy Act and of LUPA, and the decisions approving Resolutions 31887, CB

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Petitioners do not object to the joinder of the U.S. Army as owners of Fort Lawton.

DATED this 11th day of October, 2019.

ALLEN T. MILLER, WSBA #12936
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CERTIFICATE OF SERVICE

I hereby certify that on October 11th, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated this 11th day of October , 2019.

s/ Allen T. Miller
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